IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WA.No. 1117 of 2007(B)

AGAINST THE JUDGEMENT/ORDER IN WPC.3607/2006 Dated 24/03/2006
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APPELLANT: PETITIONER

MINIMOL.K.G., KOCHERIKKUDY HOUSE,
RAYONPURAM P.O., KANJIRAKKAD, ERNAKULAM-683 543.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS:
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1. THE SREE SANKARACHARYA UNIVERSITY OF SANSKRIT, REPRESENTED BY ITS REGISTRAR, MAIN CENTRE, KALADY, ERNAKULAM DISTRICT.

2. THE VICE CHANCELLOR, SREE SANKARACHARYA UNIVERSITY OF SANSKRIT, MAIN CENTRE, KALADY, ERNAKULAM DISTRICT.

3. SELECTION COMMITTEE CONSTITUTED FOR THE PURPOSE OF SELECTING PERSONS TO THE POST OF INTEGRATED CLASS IV EMPLOYEES', REPRESENTED BY ITS STAFF COMMITTEE CONVENOR, P.J.JOY.

4. MARY.K.V., INTEGRATED CLASS-IV EMPLOYEE, SREE SANKARACHARYA UNIVERSITY OF SANSKRIT, MAIN CENTRE, KALADY, ERNAKULAM DISTRICT.

BY ADV. SRI.B.SKRISHNAN,SC SANSKRIT UTY.
SRI.N.SUGATHAN
SMT.VARSHA BHASKAR
SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 16/07/2007, ALONG WITH WA NO. 1314 OF 2007 & WA NO. 1660 OF 2007, THE COURT ON 26/07/2007 DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & ANTONY DOMINIC, JJ.
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W.A. Nos 1117, 1314 & 1660 OF 2007
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Dated this the 26th day of July, 2007

J U D G M E N T

Antony Dominic, J.

Petitioners in WP(C) Nos.3607/2006, 3201/2006 and 2898/2006 are the appellants herein. Writ petitions were filed challenging the appointments made by the Sree Sankaracharya University of Sanskrit, to the post of Integrated Class IV employees. Petitioners in WPC No.3607/2006 and 3201/06 responded to the notification dated 30/5/2005 issued by the first respondent inviting applications to the post of Integrated Class IV employees. The notification, in so far as it is relevant, prescribed educational qualification as “ability to read and write”. Pursuant to the applications made by them, they were called for a written test on 20/9/2005 and both of them had appeared. Thereafter memos were issued requiring them to appear for an interview and although they reported for the same, they were refused to be interviewed for the reason that the respondents had decided to exclude candidates who had passed Pre degree examination. It is

in the aforesaid circumstances that the writ petitions were filed seeking to quash further proceedings initiated by the first respondent for selection to the post of Integrated Class IV employees and to declare that their elimination from the selection process on the ground that they possess the qualification of Pre degree to be illegal and violative of Articles 14 and 16 of the Constitution. They had also sought consequential reliefs.

2. These writ petitions, along with the other cases filed, raising identical contentions were heard by a learned Single Judge and were dismissed by judgment dated 24th March 2006.

3. In the appeal, Registrar of the University filed a counter affidavit stating that the post was intended for those with lesser qualification or no educational qualifications and the purpose of the notification was to give opportunity in public employment to those with lesser or no educational qualification and it was therefore that the qualification prescribed was only ability to read and write. According to the respondents, allowing the degree holders to compete with those who have no qualification, itself will be violative of Article 14 of the Constitution in as much as it

amounts to treatment of unequals as equals. On the practical side also, it was stated by the first respondent that if degree holders are appointed to Class IV posts, such appointees will not stick on to the post. The first respondent stated that taking into account the aforesaid facts, the Sub Committee of the Syndicate in their meeting held on 2/7/05, passed Ext.R1(a) resolution stating that 12,041 applications were sold and as the number of applications expected was too large, it was necessary to screen the applicants and to prepare a short list. In pursuance to the above, the Sub Committee decided to shortlist the applicants by eliminating applicants who have passed Plus Two and above.

4. In so far as WA 1660/07 is concerned, that was filed by the petitioners in WPC 2898/06, who were also candidates responded to the notification dated 30/5/2005. The first appellant had studied upto SSLC and the 2nd appellant had passed SSLC. According to them the written test consisted of taking down words dictated by the examiner and that the candidates were called for test in batches of 125 each. On this basis, it was contended that there was no uniform evaluation of the candidates and that the

endeavour was only to regularise the services of daily wages even by relaxing the maximum age specified for direct recruitment. The University filed its counter affidavit denying the contentions of the petitioners. In so far as the relaxation in age is concerned, it was stated that there was necessary power reserved by the University in the notification itself. Learned Single Judge by judgment dated 28th August 2006 dismissed the writ petition and appeal has been filed by the petitioners.

5. In so far as writ appeals 1117/07 and 1314/2007 are concerned, the main contention urged by the counsel for the appellants were that the first respondent acted illegally in excluding the appellants only on the ground that they possessed superior qualifications and therefore their exclusion was violative of Articles 14 and 16 of the Constitution. It was further contended that Sub Committee of the Syndicate had no jurisdiction to lay down any criteria in the matter of selection in as much as the power of the Sub Committee was only to select candidates complying with the eligibility criteria as specified by the Syndicate of the University.

6. We have considered the submissions made by the counsel for the appellants. As we have already noted, the qualification prescribed in the notification dated 30/5/2005 was ability to read and write and it has been so laid down in the Schedule to the University Statutes. As is evident from Ext.R1(a) minutes of the Sub Committee, it was in view of the large number of applications that were expected to be received that the Sub Committee found it necessary to prepare a short list and screen the applicants, by eliminating those who have passed Plus Two and above. It is beyond controversy and is settled by various decisions of this court as also the Apex Court that while making selection, the appointing authority can undoubtedly regulate its procedure for restricting the number of candidates to be considered by eliminating candidates at a preliminary selection. However, it has been held that any such procedure of elimination must be fair and reasonable and answer the requirements of Article 14 of the Constitution. Essentially therefore, the question to be considered is whether the criteria laid down by the Sub Committee in this matter was reasonable or not.

7. The University has stated in the affidavit that the post was intended for those with lesser qualification or no educational qualification and the very purpose of prescribing the qualification in the University Statute, viz. “ability to read and write” is with the intention of giving opportunity in public employment to those with lesser or no educational qualification. It is in the above background that the contentions raised by the appellants will have to be appreciated. If it was the intention of the University to give opportunity in public employment to those with lesser qualification or no qualification, we are not prepared to hold that by excluding candidates with higher qualification, the University was acting unreasonably or unfairly in any manner. We are also of the view that if such candidates with higher qualifications are considered, the purpose of prescribing qualification as above for the post in question would itself be defeated.

8. We also notice that as per the University Statutes, for the higher post of Clerk, the minimum qualification prescribed is SSLC. Since the University has by the impugned decision excluded candidates who have passed Plus Two and above, it also

ensured that those who got eventually recruited are also having the eligibility to be considered for such higher posts as well.

9. The counsel for the appellants heavily relied on the decision of the Apex Court in the case of **Mohd.Riazul Usman Gani v. District and Sessions Judge(2000(2) SCC 606)**. That was a case where posts of peons in the District and Sessions Court, Nagpur was notified for filling up with the qualification “not lower than a pass in the examination of Standard IV in the regional language”. However the Advisory Committee constituted under the rules, among other criteria, prescribed that candidates who have studied above VIIth vernacular standard may not take proper interest in the work of peons and, therefore, should not be called for interview. In this factual background and making it clear that the judgment was delivered on the facts of the case in hand, and should not be understood as laying down a rule of universal application, the Supreme Court held that the criteria which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than prescribed, cannot be rational. In this very judgment, the Apex

Court has held that when there are a large number of candidates it is permissible to lay down a criteria shortlisting the applicants, but that the criteria must be reasonable and not arbitrary, having regard to the post for which recruitment is made. In this case, we note that the Hon'ble Supreme Court has found that the candidates with higher education than Std.VII were completely shut out for being considered for the post of peons for the reason that they may not take interest in the work. The reason for such exclusion was not the nature of duties attached to the post or intention of the appointing authority to appoint those with lesser or no qualification.

10. However, in this case, we note that the decision of the University to exclude candidates was taking into account the fact that the post was intended for candidates with lesser or no qualification and that there was large number of applications available. That apart, nature of duties to be discharged was also taken into account. In these circumstances, we do not think the above judgment of the Apex Court, which was decided on its own facts, can be of any help to the appellants.

11. The counsel for the appellants relied on the judgment of this court in **Asokan and others v. State of Kerala and others (1987 (1) KLT 44)** to contend that their exclusion was illegal. We notice that in the case cited by the counsel, candidates for the post of Boat Lascar were excluded by the PSC, on the ground of age and preferring older among them. Apart from the fact that the case was decided on totally different set of facts, we also notice that in Para 8 of the judgment, this court has held that there may be cases where higher qualification is a positive disqualification for certain posts, at least in the lowest categories. The case of **Jesilet v. State of Kerala (1987(2) KLT 984)** was one involving appointment of Sewing teachers, in which, this Court held that State Government cannot by executive instructions, add other qualifications to those statutorily fixed. **Mohanan v. Prakasan (1997(2) KLT 482)** was a case in which for the post of Part time sweepers, preference was given to candidates with SSLC qualification. None of these judgments are applicable to the facts of these cases.

12. The other contention of the counsel for the appellant

was that the Sub Committee of the Syndicate had no power to lay down the criteria in question. This contention is also unsustainable for the reason that in terms of Statute 9 Chapter IV Part II of the University Statutes, Selection Committee is empowered to short list candidates, although Syndicate is to lay down the qualification. Since Ext.R1(a) is the decision of the Sub Committee of the Syndicate, which has been delegated with the power of selection, we see nothing irregular in the Sub Committee laying down the criteria in question. In view of this position, judgments in the cases of **Dr.Krushna Chandra Sahu. V. State of Orissa (1995(6) SCC 1)** and **Antony P.A and others v. Krishnadas and others (ILR 2007(1) KER.244)** also do not help the appellants in any manner

13. In so far as WA 1660/07 is concerned, the contentions are that there has not been a uniform assessment of the suitability of candidates since candidates were called for the written test in batches of 125 each. This by itself, in our view, will not invalidate the written test especially in a case where applicants are numerous as in this case and the petitioners have

not produced any material to sustain their contention. The other contention urged by the counsel was that it was impermissible for the University to have relaxed the age specified in the notification. This contention overlooks the fact that in the notification itself, it was specified that those having working experience in the University will get exemption in age to the extent they have worked in the University. In the light of the above reservation made by the University in the notification in question, we see no substance in the contention of the appellants.

We do not find any illegality in the judgments of the learned Single Judge, warranting interference. In the result, we find no merit in these appeals and the appeals will stand dismissed.

K.S.RADHAKRISHNAN, JUDGE.

ANTONY DOMINIC, JUDGE.

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